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THE QUEBEC ACT AND THE AMERICAN
REVOLUTION.

BY

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XVI.—THE QUEBEC ACT AND THE AMERICAN REVOLUTION.

By VICTOR COFFIN.

The conclusions of the present paper are drawn from a somewhat extended investigation into the introduction of English rule into French Canada, 1760–1774¹. They seem to be appropriate for use on this occasion because of the belief induced by that investigation that the place held by Canada in the early Revolutionary history is in our day much underrated, and has at all times been much misunderstood. One of the earliest expressions of the misconception I speak of is found in the Declaration of Independence; the latest that I have met is put forward with much emphasis by the reviewer of Professor Eggleston's *Life of John Patterson*, in the *New York Nation* of July 11 last. The reviewer asserts that from its conquest in 1760 Canada was regarded by the British ministry as a point d'appui "for the support of the ministerial policy in asserting British parliamentary supremacy over the colonies;" and that this position was expressed and intensified by the Quebec act of 1774, "which had for its object, as the Continental Congress charged, to substitute the institutes of French customary law for the common law of England, and thereby to make Canadians proper instruments for assisting in the oppression of such as differ from them in modes of government and faith." The first part of this statement my limited time compels me to leave with the remark that an examination of the pamphlet and other party literature, and of the diplomatic and parliamentary proceedings during the last years of the war and at the peace of 1763, will show it to be thoroughly mistaken. As

¹The result of this investigation will be found at length in the *Bulletin of the University of Wisconsin, History and Political Science Series* (1895), under title, *The Province of Quebec, 1763–1775*. A more extended form of the present paper, with references, was published in the *Yale Review* for August, 1895.

to the latter part, the reviewer simply restates the accepted tradition; namely, that the character of the relations between the colonies and the mother country led in 1774 to the joining with the acts for the punishment of the Province of Massachusetts Bay, an act (the Quebec act) designed to continue to the Canadians the despotic system of government under which they had grown up, and thus to pave the way for using them as docile instruments in the extinguishing of the liberties of the other colonies. In this view this act is denounced in the Declaration of Independence as "abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule in these colonies."

In giving the reasons for my entire dissent from these emphatic opinions I must speak in the briefest manner, and only of the most prominent points. We have these three features of the Quebec act to consider: (1) The substitution of French for English law; (2) the withholding of the representative institutions which existed in the other provinces; (3) the great territorial extension of the province. And in expressing my belief that these provisions were not due to, or intended to affect, the condition of affairs in the other provinces, I must not be understood as denying the arbitrary and tyrannical spirit of the administration by which they were enacted, nor the fact that that administration was at the moment largely inspired by hostility to the free spirit of American self-government. Its animus is sufficiently seen in the other American acts of the same session; my object is simply to show that, in spite of appearances, it was not guilty of the more far-reaching and treacherous attack on liberty imputed to it on account of the Canadian measure. The Quebec act was founded on misconception and false information, and is one of the most disastrous measures in English colonial history; but a close examination of its genesis has convinced me that it was the result of an earnest and comparatively generous effort for the welfare of the French Canadians, and that it was not to any appreciable degree affected by tyrannical ideas in regard either to them or to the rest of America.

And first, as to the change in civil laws. It will be remembered that in October, 1763, a royal proclamation was issued for the purpose of establishing civil government in the newly

acquired Provinces of Quebec, Granada, East and West Florida. This proclamation was then, and has been since, understood as subverting in Canada the whole system of French law and administration; and in this view Bancroft denounces it as an act of extreme tyranny, declaring that "the history of the world furnishes no instance of so rash injustice."¹ Lord Mansfield, on the other hand, in his famous Granada decision of 1774 refers to the proclamation as an irrevocable charter of liberties granted to all who did then or might hereafter reside in the regions in question; on the ground that the King had thereby divested himself of his direct legislative authority, and given solemn promises of the establishment of English law and representative institutions. It is clear that if the Quebec act, which undid the work of the proclamation in Canada, showed on this point the designs attributed to it, these designs could not have animated the royal breast in 1763. The promises of the proclamation were, however, not fulfilled in Canada in regard to representative institutions, and government remained on this insecure basis until 1774. During this whole period the official correspondence and reports are largely occupied with representations as to the disastrous state of things that exists in consequence of this delay and uncertainty, and with urgent adjurations to hasten the settling of the constitution. It was found impossible to put English civil law into practice except in commercial matters; and as a matter of fact there can be little doubt that the great body of the French customary law continued undisturbed. Consequently the Quebec act did not "substitute" this law for the "abolished" English; it merely removed all doubt as to which should be the basis of the permanent code. And that doubt was removed, as far as those in authority were concerned, long before the year 1774; for an examination of the official correspondence shows that the return to the French law was largely resolved on as early as 1767. Down to 1766 the colonial officials were evidently under the impression that the home government aimed to fulfill the promises of the proclamation by thoroughly assimilating the province to the English form of the other colonies. But in that year Murray was superseded by Carleton as governor; and the latter came to his duties believing, if not officially

¹ And yet in the measures taken fourteen years later to redress this supposed injustice he and others can see nothing but a reaching after "unmixed arbitrary rule."

instructed, that the ministry was inclined to restore the French civil law. Murray had already strongly urged this course, and from the very first Carleton does not cease to impress upon the home Government its justice and desirability. We find among the state papers of this year (1766) a report of the Crown lawyers, which speaks of the disorder occasioned in the Province of Quebec in consequence of the idea that it was intended "to abolish all the usages and customs of Canada," and urges that it "would be oppressive" hastily to disturb the "local usages and customs" in regard to real property. In June, 1767, we find Shelburne, the secretary of state, writing to Governor Carleton that the affairs of the province are under serious consideration, the main problem being "how far it is practicable and convenient to blend the English and the French laws;" and in August of the same year the privy council, resolving, on consideration of reports from the board of trade, that fuller information was desirable ("it being unwise and dangerous to frame or reform laws in the dark"), orders a thorough preliminary investigation. In December, Carleton sends home a draft of a proposed ordinance for continuing the French laws in regard to land property; and Hillsborough, who had succeeded Shelburne as secretary, replies, March, 1768, that it is approved of, but that for the present it is to be held in reserve pending a general settlement. We thus see that at least six years before the Quebec act the home Government, apparently uninfluenced by anything except representations as to the state of the province, had resolved to go almost as far as that act went in regard to the system of laws. The investigation ordered was at once entered upon, and the information collected was put into the hands of the Crown lawyers (Thurlow, Wedderburne, and Marriot), with orders to make exhaustive reports and recommendations. These were delayed from various causes, and it was not until 1774 that this much deliberated matter was ready to be legislated upon. The Quebec act was unquestionably founded upon these able reports of the Crown lawyers; and we can not read them without being convinced that they were almost entirely inspired by a sincere and generous, if somewhat mistaken, concern for the best interests of the province.

Next, let us consider the withholding of representative institutions. It was on this ground, I think, that was mainly based the opinion (not unreasonable, considering contemporary

events), prevailing throughout the old colonies that the constitution given to the Province of Quebec was the herald of a direct attack on old-established liberties. And I admit that on first view there would seem to be little question, apart from direct evidence, that the state of feeling in England in regard to American assemblies did influence the ministerial mind in this matter. It surely was to be expected. But even if there were an unwillingness to establish another such assembly until the difficulties with the existing ones had been somewhat appeased, we can scarcely regard such caution as indicative of a deep-laid and systematic attack on the institution. The facts show that there could have been no such intention. The first reference to the matter is on September 2, 1765, when we find the board of trade reporting to the privy council that the "situation and circumstances of the colony (Canada) have not hitherto been thought to admit of a house of assembly," but that the only obstacle they can find is the difficulty in regard to admitting Catholics as members. No further mention is made of this, and the next important official document is the report of Canadian affairs by Solicitor-General Wedderburne, December, 1772, which sets forth very clearly the main reasons for withholding an assembly. He contends that it is at present wholly inexpedient to form one in Canada on account of the peculiar difficulties presented by the religion of the great mass of the inhabitants. These difficulties he points out very forcibly, and advises instead of an assembly the form of government by a large appointed council that was actually established by the Quebec act. For the public attitude of the ministry in this matter we may go to the debate in the Commons on the Quebec act itself. The main impression which a study of this spirited and protracted discussion leaves with us as to the point is that the opposition were very careful not to press for an immediate assembly, and that the ministry were very careful to defend their withholding it purely on the grounds: (1) That it would be unjust to exclude the French Roman Catholic majority, and (2) that it would be unsafe to admit it. Attorney-General Thurlow asserted without contradiction that no one had claimed that it was at present fit to give an assembly to Canada; and Fox admitted that he would not explicitly state that such a step was then expedient. Lord Beauchamp, a Government supporter, affirmed that no member had advocated the appointment of a council because of the conduct of

the popular assemblies in America, or had ventured to say that an assembly would be always advisable. It is evident on the whole that the opposition could not offer a solution of the difficulties that lay in the way, and that the Government, whatever secret motives may have influenced it, was quite able to defend its position by pointing to these difficulties. It would be more correct to say, however, that the Quebec act deferred than that it denied an assembly, for the words are "whereas it is at present inexpedient." There was not at any time any serious consideration of the permanent refusal to the Canadians of representative institutions; and the last word on the subject in the Quebec act debate was the following from Lord North:

That it is desirable to give the Canadians a constitution in every respect like the constitution of Great Britain, I will not say; but I earnestly hope that they will, in the course of time, enjoy as much of our laws and as much of our constitution as may be beneficial to that country and safe for this. But that time has not yet come.

The ministry in short were encouraged to delay representative institutions because they were assured by the colonial officials that the great body of the French Canadian people had no desire for them, and could safely, and perhaps beneficially, be left without them for a few years to come; but there is no evidence to show that this delay was intended as the first step of a system of oppression which was ultimately to be extended to the other colonies through the instrumentality of the docile slaves that had been secured in Canada.

Lastly, as to the subject of the territorial extension of the province. This I had hoped to take up more thoroughly; but I must be content with pointing out the line of argument. The Province of Quebec was confined in 1764 (against the remonstrances of its inhabitants), and extended in 1774, not through invidious designs against the other colonies, but mainly, if not entirely, from consideration connected solely with the Indians and the fur trade. The importance of this trade in British eyes at the time need not be dwelt upon, and it will be readily seen that the general relations with the savages depended upon it and upon the treatment of the Indian territories. It can be clearly established that the steadily increasing anarchical character of the conditions in these regions had by 1774 convinced the authorities that they should be annexed to some one civil government; and having reached this conclusion it was inevitable that there should be chosen for this

purpose the province to which the region, or the most of it, was believed to have belonged, from which it could be governed most easily and which was most directly under imperial control.

From the above examination we must at least conclude that if the Quebec act was dictated by hostility to the growth and liberty of the other colonies, its authors took unusual pains to keep its real purpose hidden. But why should such concealment have been thought necessary? This same government had just carried through three bills of the most stringent and repressive nature, striking, to the popular view, heavier blows at American freedom and growth than anything contained in the Quebec act; and in these measures it had found itself backed by a consistent and overwhelming support, both in Parliament and in the country. Why should it now have scrupled to say that it was also taking measures of precaution in Canada? The government of that day was not an enlightened one, and would have been well content to secure popular support without looking to the future; and it might well have concluded that the preserving of the fur trade and the vast regions of the West from the encroachments of the rebellious colonies would have proved a popular measure. Rather than concealed, indeed, we should expect to see this feature, if occupying a prominent position in the ministerial mind, put forward with prominence. We should expect it to have been used to explain and defend before a bigoted public that apparent establishment of the popish worship which so aroused the horror of the Continental Congress, and which was as unpopular in England as in America. I have spoken above of the act as one of the most disastrous in English colonial history. It was not popular in England; it was detested in America; it was not called for or welcomed by the Canadians; it was as useless at the time as it has since proved injurious. And if I had not already exceeded my time I should like to give reasons for believing that the religious provisions of the act had very little real influence in Canada, and that the ill-timed intolerance of the Continental Congress had comparatively little to do with the ill success of the invasions of 1775-76. Canada was preserved to Great Britain not through the Quebec act, but in spite of it. The controlling forces at this critical point in the history of North America were the mismanagement of the Revolutionary cause and the vigor and ability of the British leaders.





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